S.B. CIVIL WRIT PETITION NO.970/2005

Municipal Board, Gulabpura & another.
vs.
State of Rajasthan and others.

Date : 17.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Kailash Joshi, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioner is aggrieved against the order dated 20.1.2005 by which the trial court rejected the application of the petitioner filed under Order 7 Rule 11 C.P.C. The petitioner filed this application on the ground that the plaintiff sold his property during the pendency of the suit, therefore, cause has come to an end. The trial court observed that if the property is sold out during the pendency of the suit, then on this ground, the suit of the plaintiff cannot be dismissed.

Learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme court delivered in the case of Shipping Corporation of India Ltd. vs. Machado Brothers and others reported in A.I.R. 2004 S.C. 2093 wherein the Hon'ble Supreme Court held that the suit rendering infructuous can be dismissed with the help of Order 7 Rule 11 C.P.C.

The said proposition of law is settled in view of the aforesaid decision of the Hon'ble Supreme Court.

Whether the suit has become infructuous is a question of fact which depends upon the facts of each case. In this case, the trial court has held that the suit has not become infructuous, therefore, the aforesaid judgment cited by the petitioner has no application to the facts of the case.

It may be worthwhile to mention here that Section 53A of the Transfer of Property Act provides that no property be dealt with during the pendency of the suit without permission of the Court. Order 22 Rule 10 C.P.C. also provides that the suit can be continued by even the persons upon whom the interest devolves. If the party, to whom property has been transferred and he did not become party in the suit, still the decree is binding upon the person who acquires title by devolution of interest during pendency of the suit.

It is true that in the matter of grant of decree for injunction or any discretionary relief, the Court may mould the relief according to the subsequent event.

In view of the above, if the court below has refused to dismiss the suit of the plaintiff on the ground that the suit cannot be dismissed merely because of sale of the property, I do not find any reason to interfere in the impugned order.

Accordingly, this writ petition, having no merit,

is hereby dismissed.

Learned counsel for the petitioner then submitted that the trial court may be directed to decide the suit expeditiously after framing the proper issues. However, the learned counsel admits that the issues have already been framed. Since the Court has already passed order on application under Order 7 Rule 11 C.P.C. and this Court finds no reason to interfere. The trial court is requested to decide the suit as early as possible.

(PRAKASH TATIA), J.

S.Phophaliya